



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 10-07892
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: Phuonglien Ngo, Personal Representative

June 20, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 3, 2011. DOHA issued a notice of hearing on March 10, 2011, scheduling the hearing for April 11,

2011.¹ The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and submitted exhibits (AE) A through C at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE D through H that were admitted into evidence without objection. Department Counsel's response to Applicant's supplemental information is marked as HE II. DOHA received the hearing transcript (Tr.) on May 17, 2011.

Findings of Fact

Applicant is a 61-year-old employee of a defense contractor. He has worked for his current employer since May 2010. He is a high school graduate and has some college. His wife, whom he married in 1989, is a practicing dentist. They have three children, ages 20, 18, and 16. They all reside in the home. He does not currently hold a security clearance.²

The SOR alleges three delinquent debts. The debts were listed on credit reports obtained on June 17, 2010, and January 24, 2011. In his answer, Applicant admitted all the debts.

Applicant experienced an extensive period of unemployment up until he was hired for his current position. His unemployment lasted from 2001 until May 2010. He could not find a job for his skills. He did not collect unemployment insurance during this time. Consequently, Applicant relied on his wife's dentistry practice to support their family.³

Applicant's wife is 49 years old. She graduated from dental school in 1988. She and Applicant relocated in 1995. She worked for two dentists from 1995 to 1998. In 1998, she started her own dental practice along with her brother. In 2006 or 2007, she was the recipient of a complaint by a patient. The complaint alleged that Applicant's wife performed unauthorized or uninformed dental work for the patient. A criminal fraud charge was filed against Applicant's wife. Applicant's wife's practice was located in a small town and the resulting media attention from the criminal complaint caused a dramatic decrease in her clientele. Her practice essentially ground to a stop. They relied on family support and credit cards to make it through this time. In October 2010, Applicant's wife pleaded no contest to one count of the criminal complaint against her and the remaining counts were dismissed. Applicant's wife said that Applicant had nothing to do with their financial difficulties.⁴

¹ Due to the potential for a government shutdown occurring the week of the scheduled hearing, the hearing was rescheduled for May 9, 2011, based upon a Notice of Hearing dated April 12, 2011.

² Tr. at 5, 7, 25-27; GE 1.

³ Tr. at 33, 36, 47.

⁴ Tr. at 28-35; GE 2; AE H.

All of the debts alleged in SOR (¶¶ 1.a - 1.c) were credit card debts incurred while Applicant was unemployed and his wife's dental practice was stagnant. The debts total approximately \$24,000. Applicant arranged a settlement of the debt listed at SOR ¶ 1.a (debt amount was \$6,570). He paid \$500 on May 13, 2011, and was to pay \$2,000 on May 27, 2011, to settle the debt. He did not present evidence of the second payment. This debt is unresolved. Applicant also presented a letter from his cousin who is helping him contact the creditors to settle the remaining debts. The cousin wrote a letter explaining that he was having trouble locating the current debt owners and requested more time to settle the remaining debts. Applicant presented no evidence that the two remaining debts were paid or that payment plans were arranged. Those two debts are unresolved.⁵

Applicant provided a character letter from his work supervisor that attests to his outstanding work performance. He is also viewed as a key contributor to several successful programs.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

⁵ Tr. at 35; GE 2-4; AE C, D-G.

⁶ AE A.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated three delinquent credit card debts and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant still owes all three credit card debts with no payment plan in place for two of the debts. His financial issues are recent and ongoing and his current reliability is questionable given his failure to pay the remaining debts. AG ¶ 20(a) is not applicable.

Applicant's finances were impacted by his extended unemployment and by his wife's legal issues. Those are events that were beyond his control. However, for this mitigating condition to be fully applicable, the Applicant must also demonstrate responsible action. There is insufficient evidence to support responsible action by Applicant. He remained unemployed for an extended period of time because there were no jobs with his skill set, but he could have considered other employment outside of his skill set. AG ¶ 20(b) is not applicable.

Applicant presented no evidence of seeking financial counseling, other than having his cousin assist him in negotiating settlements. He has made a small partial payment on one debt settlement arrangement and done nothing on the remaining two debts. Therefore, his finances are not being resolved and are not under control. His limited payment toward the settlement of one debt is insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are not applicable. Applicant's finances remain a security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the character letter supporting him. Although, Applicant has faced some difficult circumstances with his unemployment and his wife's criminal charges, he has done little to help himself establish a financial track record of responsible action. At this point in time, there is insufficient evidence to overcome the Financial Considerations security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge